

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re Case Nos. 01-55472-JRG and
01-55473-JRG
CONDOR SYSTEMS, INC., a Chapter 11
California corporation; and CEI
SYSTEMS, INC., a Delaware Jointly Administered for
corporation, Administrative Purposes Only
Debtors.

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ORDER ON FINAL FEE APPLICATION OF WINSTON & STRAWN
AND MURPHY SHENEMAN JULIAN & ROGERS

I. INTRODUCTION

Before the court is the final fee application of debtors' counsel Winston & Strawn LLP (W&S). In addition, Winston & Strawn has filed a fee application on behalf of Murphy Sheneman Julian & Rogers (MSJR), predecessor counsel to the debtors.

Through its final fee application, W&S and MSJR (collectively referred to as debtors' counsel) seek final approval of \$2,249,459.20 in fees and \$265,366.03 in expenses for the period from November 8, 2001 through December 12, 2003. On March 23, 2004, the court ordered an audit of debtors' counsel's fee request. Having reviewed the audit report and the comments of debtors'

1 counsel, as well as the United States Trustee (UST) and the
2 creditors' committee, the request for final approval of fees and
3 expenses is granted in part and denied in part as herein stated.

4 **II. GENERAL BACKGROUND**

5 Condor was part of the electronic warfare industry. It was a
6 provider of technologically advanced signal collection and
7 specialized electronic countermeasure products. In the past its
8 sales had reached \$80-\$100 million. Condor was represented by the
9 law firm of MSJR since the time it filed its Chapter 11 petition
10 on November 8, 2001. W&S was substituted in place of MSJR as
11 counsel to the debtors by the court's order entered March 4, 2003.¹

12 On filing, Condor intended to reorganize by pursuing a plan and
13 disclosure statement, which was filed with the petition. However,
14 problems soon arose over the valuation of Condor as a stand-alone
15 business and over the debt structure of the plan.² Eventually
16 Condor was sold to EDO Acquisition IV, Inc. (EDO). In the
17 meantime, the creditors' committee sought to pursue litigation
18 against shareholders and directors of Condor and opposition was

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20 ¹ According to the final fee application, MSJR represented the debtors from November 8,
21 2001, until February 14, 2003. W&S acquired virtually all of the attorneys of MSJR, including
22 those attorneys who are responsible for representing the debtors in this bankruptcy case. The
23 court is treating the request for fees incurred on or before February 14, 2003, as that of MSJR
24 and fees after that date as that of W&S. Where general reductions on a percentage basis are
25 made for a particular category of fees, the court has made no allocation between the two firms.

26 ² This general background is abridged. A complete discussion can be found in the court's
27 "Order On Contested Fee Applications Of Murphy, Sheneman, Julian & Rogers," filed October 22,
28 2003. In its reply to the comments of the UST and creditors' committee, debtors' counsel
complains that the committee has been successful in "promoting its 'story' of what happened."
Debtors' counsel states that these "disingenuous statements, subtle misrepresentations, and
exaggerations ... have become commonly accepted 'case legends,'" and that "certain 'facts' have
become 'true' through constant repetition." However, at no time has debtors' counsel taken
the court up on its offer to hold an evidentiary hearing nor has it presented the court with
any new evidence to rebut these so-called "case legends." In coming to the conclusions it has,
the court has drawn reasonable inferences using the evidence before it with respect to disputes
regarding prior fee applications.

1 presented. The court granted the committee most of the authority
2 it sought and many of the claims eventually settled. Because of
3 the issues that swarmed around MSJR's participation in the plan and
4 disclosure statement, as well as the committee's ability to pursue
5 litigation, the court denied \$227,733.30 in fees that MSJR had
6 requested.

7 **III. FEES**

8 By way of its final application, W&S and MSJR seek
9 \$2,249,459.20 in fees for services from November 8, 2001 through
10 December 12, 2003. This amount does not include the \$227,733.30 in
11 disallowed fees that MSJR sought in the first and second fee
12 applications. According to its statement in the final fee
13 application, debtors' counsel will not seek allowance of the fees
14 previously disallowed on the first and second fee applications.
15 Because the court disallowed fees in particular billing categories
16 for the period commencing on November 8, 2001 and ending on May 31,
17 2002,³ the fees in these billing categories were separated and not
18 included in other categories of the audit. [See Audit Report,
19 "Recomputation of Fees and Expenses," pages 3-4; Exhibit Z.]⁴

20 In addition, the audit reveals a difference of \$647.50 between
21 the requested amount and the computed amount. The discrepancy is
22 a result of the activity not equaling the entry hours. [See
23 "Recomputation of Fees and Expenses," page 3; Exhibit A.] Thus,
24

25 ³ The billing categories on the first and second fee applications referred to are R, R01,
26 R02, R03, R04, R05, R06, G01, N05, and N06.

27 ⁴ All references to audit report and exhibits are found in the "Review and Analysis of
28 Final Fee Application Submitted by Winston & Strawn," which was filed with the court on July
29, 2004.

1 the court considers the fees before it for approval on a final
2 basis are \$2,248,811.70.

3 **A. Fees Debtors' Counsel Agrees To Delete.**

4 Debtors' counsel acknowledges that certain categories of fees
5 questioned by the audit report are appropriate to delete. These
6 fees total \$8,104.00 and include the following categories and
7 amounts:

- 8 • post-petition double billing in the amount of \$1,072.00
9 [See Exhibit B-1];
- 10 • pre-petition double billing in the amount of \$585.00 [See
11 Exhibit B-2];
- 12 • adjustment for time increments kept in a quarter of an
13 hour in the amount of \$54.00 [See Exhibit C];
- 14 • travel billed in excess of 50% of the hourly rate of the
15 professional in the amount of \$1,242.00 [See Exhibit H-
16 1];
- 17 • non-working travel which exceeded the six-hour limit in
18 the court's order of December 18, 2001, in the amount of
19 \$5,151.00 [See Exhibit H-2].

20 Debtors' counsel states that all other items mentioned or
21 questioned in the audit are self-explanatory or can be dealt with
22 by the furnishing of additional information or clarification of
23 existing entries; it does not believe the time and effort in doing
24 so in an across the board fashion is necessary or justified.

25 When given the opportunity to comment on the audit report, the
26 court received two responses, one from the UST and the other from
27 the creditors' committee. Debtors' counsel was given a further
28 opportunity to respond to these comments.

1 The court must address the issues raised by the UST and the
2 committee that warrant discussion. In addition, the court has a
3 duty to review each request and determine whether the requirements
4 of § 330 of the Bankruptcy Code are met. In re Busy Beaver Bldg.
5 Ctrs., Inc., 19 F.3d 833, 840-45 (3rd Cir. 1994); In re Berg, 268
6 B.R. 250, 257 (Bankr. D. Mont. 2001). Section 330 of the Bankruptcy
7 Code provides that the court may award to a professional person
8 employed under §§ 327 or 1103, reasonable compensation for actual,
9 necessary services rendered and reimbursement of actual, necessary
10 expenses. In determining the amount of reasonable compensation, the court
11 considers the nature, the extent, and the value of the of such services,
12 taking into account all relevant factors. 11 U.S.C. § 330(a)(3).

13 In reviewing the audit report and comments, the court has
14 concluded the following.

15 **B. Additional Reductions Are Warranted For Services**
16 **Related To The Plan And Disclosure Statement And The**
Committee's Motion To Pursue Litigation.

17 The court's October 22, 2003 order regarding MSJR's first and
18 second fee applications discussed at length the amount of MSJR's
19 fees accrued through May 31, 2002, on the committee's motion to
20 pursue litigation against shareholders and directors, and on MSJR's
21 "dual-track" approach concerning the plan and disclosure statement
22 while the sale of the business to EDO was pending. In doing so the
23 court sustained the objections of both the UST and the committee.
24 The result was that only \$10,000.00 in fees was allowed with
25 respect to the committee's motion to pursue litigation. As for the
26 "dual-track" approach, the court agreed that there was little value
27 in MSJR's work in this area, especially given the amount MSJR was
28 paid pre-petition for preparing the plan and disclosure statement.

1 Thus, only 20% of the fees with respect to the plan and disclosure
2 statement was allowed.

3 The court requested that the auditor separate out entries that
4 were related to the plan and disclosure statement and the
5 committee's motion to pursue claims. The court believes that
6 further reductions with respect to these categories are warranted.
7 In addition, where some of the services provided were not likely to
8 benefit the estate or were not necessary, the court may award less
9 compensation than requested. In re Smith, 317 F.3d 918, 926 (9th
10 Cir. 2002).

11 The audit highlights that \$13,928.50 in fees were incurred
12 after May 31, 2002, with respect to the committee's motion to sue
13 the shareholders and directors. [See Exhibit S.] Taking into
14 account entries for which fees have been denied because debtors'
15 counsel acknowledges they were double-billed, [see Exhibit B], the
16 total fees incurred with respect to the committee's motion to sue
17 the shareholders and directors are \$13,888.00.

18 Considering the sale of Condor was finalized June 25, 2002, the
19 additional amount of work performed was neither necessary nor
20 reasonable. As stated in the court's order of October 22, 2003,
21 "[i]t must be noted that the potential defendants, directors and
22 shareholders, were represented by their own experienced and
23 extremely competent counsel." These attorneys continued to provide
24 the court with their well-presented legal positions and MSJR's
25 participation did little to benefit the estate. Despite the
26 presence of competent counsel to assist the affected parties and
27 the sale of the debtors' assets, MSJR continued to participate in
28 the motion beyond monitoring and providing information on request.

1 MSJR's continued involvement is questionable because its position,
2 that a lawsuit against shareholders and directors would affect the
3 reorganization, was no longer viable after the sale. Thus, the
4 court will grant MSJR an additional \$2,000.00 with respect to the
5 committee's motion and deny the remaining \$11,888.00 in fees.

6 With respect to the plan and disclosure statement, the audit
7 report identified a number of entries related to the failed plan
8 and disclosure statement that were outside the specific categories
9 of fees previously denied on the first and second fee applications.⁵
10 [See Exhibit W.] A total of \$11,921.25 in additional fees is
11 revealed in Exhibit W. After reviewing the entries, the court
12 notes that \$9,980.25 in fees incurred prior to the sale of EDO
13 relate to the plan and disclosure statement. Consistent with the
14 court's October 22, 2003 order regarding MSJR's fees, the court
15 will allow 20% of the \$9,980.25 in fees billed, \$1,996.05, and deny
16 the balance of \$7,984.20 in fees.

17
18 **C. Fees For The Retention And Compensation Of Professionals
Will Be Reduced.**

19 The report highlights that with respect to MSJR's and W&S's
20 retention and compensation, \$175,384.25 in fees were incurred. [See
21 Exhibit Q-1.] For other professionals' retention and compensation,
22 \$113,913.00 in fees were incurred. [See Exhibit Q-2.] Debtors'
23 counsel incurred \$14,263.00 in fees with respect to Nightingale &
24 Associates' retention and compensation as financial advisor to the
25 debtor. [See Exhibit Q-3.] Finally, \$10,792.00 was spent on
26 objections to other professionals' retention and compensation. [See
27 Exhibit Q-4.] A total of \$314,352.25 in fees in connection with

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⁵ See footnote 3, *supra*.

1 the employment and compensation of professionals is sought. Taking
2 into account the double-billed items, [see Exhibit B], the total
3 fees related to these retention and compensation categories are
4 \$313,805.25.

5 Prior to the audit, the UST stated in its limited objection
6 that MSJR had agreed to a \$25,000.00 reduction from the category
7 entitled "Contested Fees." However in its comments to the audit,
8 the UST states that the fees related to retention of professionals
9 and compensation are excessive under the circumstances, especially
10 because some of the fees were incurred in connection with
11 unsuccessful defenses of the fee applications.

12 In the committee's comments to the audit report it seeks
13 specific reductions for the fees related to employment and fee
14 applications. It suggests that: (1) no more than \$75,000.00 of the
15 \$175,384.25 sought for debtors' counsel's employment and fee
16 applications be allowed; (2) no more than \$50,000.00 of the
17 \$113,913.00 sought for employment and compensation of other
18 professionals be allowed; (3) no more than \$3,000.00 of the
19 \$14,263.00 in fees sought in support of the Nightingale fee
20 applications be allowed; and (4) the \$10,792.00 incurred for the
21 objections to other professionals retention and compensation be
22 disallowed in its entirety.

23 Debtors' counsel responds that its offer of a \$25,000.00
24 reduction for this category was in exchange of a final resolution
25 of the UST's concerns. However, the UST has now further commented
26 that the fees are excessive. It also responds that committee's
27 counsel incurred \$155,044.83 with respect to professional fees.
28 Debtors' counsel asserts that if the court follows the committee's

1 suggestion, debtors' counsel will receive only \$128,000.00 in fees
2 for the category related to professional fees.

3 With respect to fee applications, § 330 of the Bankruptcy Code
4 contemplates compensation for the preparation of fee applications. 11
5 U.S.C. § 330(a)(6); In re Smith, 317 F.3d at 927-28. As with all
6 compensation requested, the court must determine an amount that is
7 reasonable. Some courts have utilized a benchmark such as 5%. In re Bass,
8 227 B.R. 103, 109 (Bankr. E.D. Mich. 1998); In re Spanjer Bros., Inc., 203
9 B.R. 85, 93 (Bankr. N.D. Ill. 1996). Such benchmarks are helpful but the
10 circumstances of each case should control. In addition, courts have
11 found that a chapter 11 debtor's attorney was not entitled to
12 compensation for defending its fee application against objections.
13 In re St. Rita's Assocs. Private Placement, 260 B.R. 650 (Bankr.
14 W.D.N.Y. 2001).

15 The court concludes the comments of the UST and the committee
16 are well-taken with respect to this category of fees. Excluding the
17 Nightingale retention and compensation category and the double-
18 billed fees reflected on Exhibit B, the total fees related to
19 professionals' retention and compensation are \$299,542.25, or a
20 little more than 13% of the total fees requested in the final
21 application. Given the circumstances of the case, the court
22 concludes an amount equal to 7.5% of the total fees requested in
23 the final fee application, or \$168,709.44, would provide debtors'
24 counsel with reasonable compensation with respect to this category
25 of fees. Such a reduction is warranted given the requested fees
26 include debtors' counsel's failed defense and prosecution of
27 various objections to fees. Thus, the court will not approve
28 \$130,832.81 of the requested fees.

1 With respect to Nightingale's retention and compensation, the
2 court concludes that \$2,500.00 is adequate compensation. The
3 debtors sought Nightingale's assistance in its capacity of
4 financial advisor. As detailed in the court's "Order On Contested
5 Fee Applications Of Nightingale & Associates," filed October 22,
6 2003, the court denied Nightingale a total of \$510,367.65 in fees
7 for its failure to make Rule 2014(a) disclosures. However, the
8 court did allow Nightingale's fees that were related to the sale
9 and wind-up of Condor.

10 For that reason, the court does not believe a complete denial
11 of debtors' counsel's fees for this category is warranted.
12 However, the court must acknowledge that committee's counsel
13 incurred fees with respect to bringing the Rule 2014(a) disclosure
14 problem to the court's attention and pursuing Nightingale for a
15 further recovery of fees. During this period, debtors' counsel
16 assisted Nightingale in opposing the committee's objection to
17 Nightingale's fees. Thus, a reduction in the amount of \$11,763.00
18 is warranted given the outcome of Nightingale's employment and
19 compensation.

20

21 **D. Insufficient Evidence Exists To Reduce Fees Sought For
Key Employee Retention Plan (KERP) Motions.**

22 Both the UST and the committee comment on the amount of fees
23 spent on the KERP motions. [See Exhibit T.] However, the court
24 will not reduce any fees related to this category. First, the
25 court did not issue any rulings on any of the KERP motions brought
26 before the court. The KERP was entered into as a stipulated
27 judgment and was the product of negotiations between the creditors'
28 committee and the debtors. Any subsequent disputes with respect to

1 payments to be made under the KERP were the result of incomplete
2 negotiations. A reduction in fees by the court would be the product
3 of speculation at best. Thus, the court will not reduce any fees
4 in this category.

5 **E. Fees For Vaguely Described Activities Will Be Disallowed.**

6 The audit report highlights a number of entries for which the
7 description of the activity appears vague. [See Exhibits D-1 and D-
8 3.] Time entries are not simply to record the number of hours worked;
9 they also should detail the type of work done. Regardless of the method of
10 compensation and regardless of the type of professional fees at issue, the
11 court must evaluate the complexity and necessity of work done on behalf of
12 the estate in order to determine appropriate compensation. In re Poseidon
13 Pools of America, Inc., 180 B.R. 718, 729-31 (Bankr. E.D.N.Y. 1995)

14 Of particular concern to the court are entries with vague
15 characterizations of the services performed, especially those which
16 reference "confer," but make no mention of the person with whom the
17 professional conferred. In reviewing the postpetition entries on Exhibit
18 D, the court denies \$680.50 in fees due to a lack of adequate description
19 of services.⁶

20

21 **F. Reduction In Fees For Intra-Office Conferences For Which More
22 Than One Professional Billed Is Warranted.**

23 The audit report identifies \$236,449.93 in fees that are
24 related to intra-office conferences and of that amount, \$102,758.71
25 in fees is identified to involve more than one professional billing
26 for the same intra-office conference. [See Exhibit F-1.] In

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28 ⁶ The entries disallowed on Exhibit D-1 are: 5/5/2003, 5/9/2003 Knox; 11/8/2001,
6/25/2002, 6/25/2002, 7/18/2002, 9/12/2002, 2/26/2003, 4/21/2003, 5/2/2003, 5/7/2003,
10/21/2003, 11/6/2003, 12/10/2003 Rawlins; 10/22/2003 Sagerman.

1 addition, \$137,485.83 in fees are identified for outside hearings
2 or conferences in which more than one professional was present.
3 [See Exhibit G-1.] Of that amount, \$91,207.83 involves more than
4 one professional billing for the particular meeting or conference.
5 [See Exhibit G-1.]

6 The Bankruptcy Court for the Northern District of California
7 /////
8 maintains Guidelines for Compensation of Professionals.⁷ Guidelines 15 and
9 16 provide:

10 15. **Conferences** - Professionals should be prepared to explain time
11 spent in conferences with other professionals or
12 paraprofessionals in the same firm. Failure to justify this
time may result in disallowance of all fees related to such
conferences.

13 16. **Multiple Professionals** - Professionals should be prepared to
14 explain the need for more than one professional or para-
15 professional from the same firm at the same court hearing,
16 deposition or meeting. Failure to justify this time may result
in compensation for only the person with the lowest billing
rate.

17 Consistent with the district's guidelines, the general rule is that
18 no more than one professional may charge the estate for intra-office
19 conferences and meetings absent an adequate explanation. In re Bennett
20 Funding Group, Inc., 213 B.R. 234, 245 (Bankr. N.D.N.Y. 1997); In re
21 A.A.D.C., Inc., 193 B.R. 448, 450-51 (Bankr. N.D. Ohio 1996); In re
22 Poseidon Pools of America, Inc., 180 B.R. at 731. This is equally
23 applicable to the attendance by more than one professional at an outside
24 conference or hearing.

25 In its comments, debtors' counsel states that a review of the
26 intra-office conferences in the audit report is an example of a

27 _____
28 ⁷ The District's Guidelines for Compensation and Expense Reimbursement of Professionals
and Trustees are available on the District's Web Site at <http://www.canb.uscourts.gov>.

1 word search run amok and that "conferences" and "telephone" calls
2 are included without regard to context or justification. In
3 addition, for meetings and court appearances, many of the billed
4 time entries are of half an hour or less and in other instances the
5 MSJR lawyer participated in only part of the meeting or call.

6 The court is well aware of the complexity of the debtors'
7 situation. In a complex case such as this one, no single
8 professional is going to possess all of the skills to accomplish
9 the necessary tasks. The estate is better served where multiple
10 professionals with the required expertise are utilized. In these
11 circumstances, some communication is required.

12 The court accepts debtors' counsel's explanation with respect
13 to multiple professionals at outside conferences and hearings. It
14 does not appear to be a situation in which debtors' counsel was
15 unreasonably overstaffing its participation in outside meetings or
16 hearings.

17 As for intra-office conferences, MSJR's statement offers no
18 explanation about why the number of intra-office conferences was
19 necessary and reasonable. The audit report highlighted over 500
20 pages of entries related to intra-office conferences. For other
21 professionals with a significant amount of intra-office
22 conferencing and inadequate explanation, the court took the entries
23 for the highest billing professional and then reduced those fees by
24 50%. Given the number of entries, the court believes a more
25 reasonable approach in debtors' counsel's application is to take
26 25% of the \$102,758.71 in intra-office conference fees that are
27 highlighted on the report as involving more than one professional
28 billing. This results in a reduction of \$25,689.68, which the

1 court finds to be on par with similar reductions taken in other
2 professionals' fee applications for excessive intra-office
3 conferencing.

4
5 **G. Administrative/Clerical Activities By Paraprofessionals
And Professionals Warrant Fee Reductions.**

6 The audit report highlights a number of activities by
7 paraprofessionals that appear to be clerical in nature. [See
8 Exhibit I-1.] According to District Guideline 18:

9 18. Administrative Task - Time spent in addressing, stamping and
10 stuffing envelopes, filing, photocopying or "supervising" any
11 of the foregoing is not compensable, whether performed by a
professional, paraprofessional or secretary.

12 Debtors' counsel's employment and retention is to be in accordance
13 with § 330 of the Bankruptcy Code and the local guidelines of the court.
14 Clerical services are overhead expenses and are not compensable under §
15 330(a). Sousa v. Miguel (In re United States Trustee), 32 F.3d 1370, 1374
16 (9th Cir. 1994). Services such as filing, assembling or compiling
17 documents, organizing files, calendaring dates, making copies, faxing or
18 transmitting, moving records, to name a few, are inherently clerical.

19 Debtors' counsel's response is that this audit category is the
20 product of a word search and a review of the time entries demonstrates
21 entries are for work that clearly requires "legal acumen." Cited as an
22 example is the filing of the Condor and CEI Petition and First Day
23 Pleadings with the San Jose Bankruptcy Court.

24 However, a review of the time entries discloses a number of entries
25 that are clerical in nature. For example, arranging for the retrieval of
26 an order from the court, [see Exhibit I-1: 1/23/02 Chan], calendaring
27 dates, [see Exhibit I-1: 4/25/02 Kline], updating creditor's addresses and
28 service lists, [see Exhibit I-1: 11/21/01, 10/28/03 Kline], or preparing

1 envelopes, [see Exhibit I-1: 6/5/03 Kline], to name a few. Because many
2 of the entries in Exhibit I-1 are clerical, the court will reduce the fees
3 for this category by 50%, amounting to a reduction of \$22,861.25.

4 As for professionals, the court has reviewed the entries on Exhibit
5 I-2 and determined that \$935.00 in fees should be denied as /////
6 clerical in nature.⁸ [See Exhibit I-2.]

7 **H. All Other Fees Requested Are Approved.**

8 No further categories of fees are brought to the court's
9 attention as requiring further scrutiny or specific discussion.
10 The court has reviewed the remaining fee categories outlined in the
11 audit report and concludes that no further reductions are
12 warranted. The court denies a total of \$220,738.44 in requested
13 fees.

14 **IV. EXPENSES**

15 As for expenses, in the final application debtors' counsel
16 seeks reimbursement for \$265,366.03 in expenses. The audit report
17 states that a recomputation of the expense request reveals a
18 difference of \$3.01. The auditor was unable to locate the source of
19 the discrepancy. [See "Recomputation of Fees and Expenses," page
20 3.] As a result of the discrepancy, the court will consider the
21 expenses to total \$265,363.02.

22 **A. Double-Billed Expenses Are Denied.**

23 The audit report discloses that \$368.33 in expenses were
24 double-billed. [See Exhibit AA.] Debtors' counsel agrees the
25 expenses double-billed should not be reimbursed.

26 _____
27 ⁸ The entries disallowed on Exhibit I-2 are: 2/15/02, 2/19/02, 3/13/03, 5/8/03 Knox;
28 12/28/01, 2/20/02, 2/25/02, 5/2/02, 6/18/02, 3/26/03, 4/16/03, 5/1/03, 5/1/03, 5/14/03, 6/2/03,
6/9/03, 6/12/03, 6/23/03, 6/27/03, 7/2/03, 12/11/03 Rawlins; 6/25/03, 6/26/03 Richardson;
5/23/02 Sagerman.

1 **B. Fax Charges Must Comport With The Northern District's**
2 **Guidelines.**

3 The audit report highlights that \$4,910.41 in expenses were
4 incurred for fax transmissions. [See Exhibit EE-1.] In addition,
5 \$158.24 was incurred for outside fax transmissions. [See Exhibit
6 EE-2.]

7 The District's Guidelines indicate that outgoing faxes should be
8 charged as a phone call and incoming faxes as a photocopy. This Guideline
9 was developed after a review of the practices of a wide variety of law
10 firms. The practices involving outgoing and incoming faxes were so
11 disparate that it became obvious that actual cost was not the determining
12 factor for the charge. The District then adopted the Guideline inviting
13 the bar to present data substantiating the actual cost. None has ever been
14 presented.

15 In reviewing the entries, the court is unable to distinguish
16 between outgoing and incoming faxes or to determine on what basis
17 debtors' counsel charged for fax transmissions. For that reason,
18 the court will deny 50% of the fax transmission expenses. Thus for
19 fax transmissions, \$2,455.20 in reimbursement is denied. In
20 addition, the \$158.24 for the outside fax service will be denied.
21 No explanation concerning the reasonableness of these entries was
22 provided to the court.

23 **C. Miscellaneous Reductions In Expense Reimbursements For**
24 **Noncompliance With The Northern District's Guidelines.**

25 The audit report brings to the court's attention an expense
26 incurred for parking in Los Angeles in the amount of \$9.00 on April
27 9, 2002. [See "Findings," page 29.] The report states no
28 information is given about the nature of the charge.

1 District Guideline 35 provides: "[P]arking for professionals
2 ... at their principal place of business is not reimbursable
3 regardless of the day of the week or time of day." Given that no
4 information is provided on the reason for the parking charge and
5 that debtors' counsel is located in Los Angeles, the court denies
6 the expense reimbursement of \$9.00.

7 The audit report also points out that expense reimbursement for
8 several lunches totaling \$77.32 is sought. [See Exhibit GG.] Under
9 Guideline 38: "The cost of lunches while a party is away ... is not
10 reimbursable." Thus, the court will deny this expense
11 reimbursement.

12 There also is a hotel expense on June 25, 2002, in the amount
13 of \$90.75, which is not associated with any travel. [See
14 "Findings," page 31; Exhibit JJ.] For the date the hotel expense
15 was incurred, the professional's fee entries stated traveled to and
16 from San Jose on the same date.

17 Thus, the court denies \$3,158.84 in expense reimbursements for
18 the above stated reasons.

19 **V. CONCLUSION**

20 The court approves on a final basis fees in the amount of
21 \$2,028,073.26, having denied \$220,738.44 in fees. Expense
22 reimbursement is approved in the amount of \$262,204.18, the court
23 having denied \$3,158.84 in expenses. Total fees and expenses
24 approved on a final bases are \$2,290,277.44. All fees and expenses
25 that are denied are done so on a final basis. Any fees and
26 expenses debtors' counsel has received in excess of those approved
27 herein are to be returned to the reorganized debtor.

28 DATED: _____

UNITED STATES BANKRUPTCY COURT

For The Northern District Of California

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JAMES R. GRUBE
UNITED STATES BANKRUPTCY JUDGE

Case Nos. 01-55472-JRG and 01-55473-JRG

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

CERTIFICATE OF MAILING

I, the undersigned, a regularly appointed and qualified Judicial Assistant in the office of the Bankruptcy Judges of the United States Bankruptcy Court for the Northern District of California, San Jose, California hereby certify:

That I, in the performance of my duties as such Judicial Assistant, served a copy of the Court's **ORDER ON FINAL FEE APPLICATION OF WINSTON & STRAWN AND MURPHY SHENEMAN JULIAN & ROGERS** by depositing it in the United States Mail, First Class, postage prepaid, at San Jose, California on the date shown below, in a sealed envelope addressed as listed below.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on _____ at San Jose, California.

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